IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5595 OF 2006

Saraswati Gupta & Ors. ....Petitioners

V/s.

B.S. Kumar ....Respondent

Mr.V.R. Tripathi i/b V.R. Tripathi & Associates for the Petitioners.

Mr.Chandra Naik for the Respondent.

CORAM : R.M. SAVANT, J.
DATED : 12TH JUNE, 2007.

P.C. :

1. This Petition impugns the order dated 29.6.2006 passed on the application made by the Defendant for impounding the document in question. It is an admitted fact that the said document has been produced in the trial Court in L. E. & C. Suit No.1/1 of 1999.

2. Whilst dealing with the said application, the trial Court has directed that since the document has not been properly stamped and registered, both the parties i.e the Plaintiff and the Defendant to share equally the stamp duty and the alleged registration

charges. Being aggrieved by the said direction, the Petitioner has filed the present Petition. It is the contention of the Petitioners that since the very genuineness of the document has been challenged by them, the question of payment by the Petitioners does not arise. The observations of the trial Court that the parties have to share 50% of the expenses each is based on a covenant of the agreement, the genuineness of which is under challenge. It is therefore, submitted by the learned counsel appearing on behalf of the Petitioners that the Petitioners are not liable to make any payment.

3. Since the Respondent/Plaintiff seeks to rely upon said document and since it is the case of the Petitioner herein that the said document is forged document, in my view interest of justice would be served if the Respondent here is directed to make full payment of the stamp duty and the registration charges and only in the event the case of the Petitioner that the said document is a forgery, is not accepted then payment would be due from the Petitioner and only in that eventuality the direction contained in the impugned order of sharing the stamp duty and registration charges would become operative and the Petitioner herein would be liable to pay 50% of the

amount. The learned counsel for the Petitioner makes a statement that the Petitioner would abide by any such direction which would be passed by the trial Court on the conclusion of the trial. The trial Court shall decide the said suit and the issue hereabove uninfluenced by the instant order.

4. The Petition is accordingly disposed of with the aforesaid observations.

(R.M. SAVANT, J.)